

In the Matter of:)
)
Application for Certification) Docket No.
for the Magnolia Power) 01-AFC-6
Project)

2:00 p.m.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Presiding Member

Scott Tomashefsky, Commissioner Advisor

Susan Gefter, Hearing Officer

STAFF PRESENT

David Abelson, Staff Counsel

J.W. Reede, Project Manager

Richard Sapudar

PUBLIC ADVISER

Grace Bos, Deputy Public Adviser

APPLICANT

Scott Galati, SCPPA
Grattan and Galati

Patricia L. Shanks, SCPPA
McCutchen, Doyle, Brown & Enersen, LLP

Bruce E. Blowey, Magnolia Power Project

Douglas Hahn
Robert Collacott
URS

ALSO PRESENT VIA TELEPHONE

Dave Hung
Winnie Jesena
Los Angeles Regional Water Quality Control Board

John Yee
Knute Beruldsen
South Coast Air Quality Management District

Richard Murillo
City Attorney
City of Burbank

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1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, good afternoon. My name is Robert
4 Laurie, Presiding Member of the Siting Committee
5 hearing the case of the Magnolia Power Project.
6 To my right is Ms. Susan Gefter, my Hearing
7 Officer assigned to the case, and to my left is my
8 Advisor, Mr. Scott Tomashefsky.

9 I'm going to ask for introductions in a
10 moment, but I want to make sure that we understand
11 the purpose of today's meeting. We are primarily
12 going to talk about schedules. In order to talk
13 about schedules, we'll have to talk about some
14 issues and the status of those, and it is my
15 intent to engage in those discussions and not
16 reach resolution as to those issues, but reach
17 resolution as to the methodology that we're going
18 to use to get to resolution of those issues, in a
19 very timely manner.

20 Before we get to introductions, Susan,
21 did you want to talk about the procedure at this
22 point, we're to follow, or would you prefer that
23 we have introductions on the record first?

24 HEARING OFFICER GEFTER: We should have
25 introductions first. I also want to note that we

1 have several agency representatives that would be
2 on the phone. The participants on the phone are
3 in the listening mode only, until we ask the
4 operator to open the line up for your comments.
5 We will ask our phone operator for the names of
6 the phone participants. You don't have them yet.
7 Once you get them, let us know.

8 In the meantime, we can go to
9 introductions.

10 PRESIDING MEMBER LAURIE: Okay.
11 Applicant, please introduce yourselves and the
12 other individuals on your team.

13 MR. GALATI: Yes. My name is Scott
14 Galati, representing SCPPA.

15 MR. BLOWEY: Bruce Blowey, SCPPA.

16 All right. We have Douglas Hahn, with
17 URS. We have Patricia Shanks, also assisting us
18 with SCPPA. And we have Bob Collacott, from URS.

19 MR. REEDE: Good afternoon, Commissioner
20 Laurie. My name is James Reede, I'm the Energy
21 Facility Siting Project Manager for the California
22 Energy Commission, in charge of the review of the
23 Application for Certification of the Magnolia
24 Power Project.

25 MR. SAPUDAR: Good afternoon. I'm

1 Richard Sapudar, with the Soil and Water Resources
2 group, working on the Magnolia Power Project.

3 MR. ABELSON: David Abelson, Senior
4 Staff Counsel, representing Staff on this
5 particular siting case.

6 PRESIDING MEMBER LAURIE: Thank you,
7 gentlemen. The representative from the Public
8 Advisor's Office?

9 DEPUTY PUBLIC ADVISOR BOS: I'm Grace
10 Bos, with the Public Advisor's Office.

11 PRESIDING MEMBER LAURIE: Thank you very
12 much.

13 Representative from CURE present? No
14 representative from CURE being present at this
15 time.

16 Governmental agencies, representatives
17 from governmental agencies present?

18 HEARING OFFICER GEFTER: Those
19 individuals will be on the phone, and we'll get
20 their names in just a moment, after the operator
21 collects the names for us.

22 PRESIDING MEMBER LAURIE: At this time,
23 Ms. Gefter, why don't you take a moment and review
24 the procedure that we're going to follow today.

25 HEARING OFFICER GEFTER: As background

1 for the record, we accepted the AFC in this case
2 on September 26th, 2001, under the six month
3 review process. The six month schedule has
4 already slipped approximately ten weeks, upon
5 agreement of the parties. The Applicant requested
6 today's Scheduling Conference to discuss issues
7 related to the project's NPDES permit, and other
8 items, and we originally scheduled today for the
9 Pre-Hearing Conference, but it was postponed so
10 that the parties could discuss the scheduling
11 issues today.

12 What we'll do is we'll ask the Applicant
13 to begin with its presentation on the scheduling
14 issues with respect to the NPDES permit and any
15 other issues that are pending. Then we would ask
16 the Staff to present your position, and then we
17 will ask the representatives from the agencies to
18 come online and give us your explanation of what's
19 going on with the schedule. And then we will discuss
20 scheduling among ourselves, and then we will
21 conclude.

22 So at this point, what I would like to
23 find out first of all is whether the operator has
24 the names of the individuals who are on the phone.

25 All right. We have Tony Rizk, who is

1 from the LA Regional Water Quality Control Board,
2 and we'll ask Dr. Rizk to speak to us later, when
3 we get to that discussion.

4 Also on the phone are Richard Murillo
5 and Paul Lauffler, who I guess work with the
6 Magnolia Project. Are those names familiar to
7 you, Mr. Galati?

8 MR. GALATI: Rick Murillo, correct. But
9 Paul Lauffler --

10 MR. BLOWEY: Paul Lauffler, and this is
11 a Michael Lauffler?

12 HEARING OFFICER GEFTER: Michael
13 Lauffler.

14 MR. BLOWEY: Michael Lauffler is an
15 attorney with the Regional --

16 HEARING OFFICER GEFTER: The State Water
17 Resources Board. Okay. And then we -- John Yee
18 is on the phone for the South Coast Air Quality
19 Management District. We'll also get to Mr. Yee
20 later.

21 Please let us know of any other
22 individuals who come on the phone.

23 PRESIDING MEMBER LAURIE: And let's go
24 to the Applicant. And Mr. Galati, if you could
25 lay out the issues, and then discuss the timing

1 implications of the extant issues, please.

2 MR. GALATI: Thank you, Commission
3 Laurie, thank the Committee for making time to
4 hear this matter. I know it's somewhat out of
5 ordinary to require or ask for a Commissioner
6 presence for a Scheduling Conference.

7 We believe the --

8 PRESIDING MEMBER LAURIE: First of all,
9 let me interrupt with that. I don't consider it
10 unique or out of order at all. It should be done
11 on a regular basis. There should not be
12 continuing hang-ups, as there have been in this
13 case, without Committee intervention. So, go
14 ahead.

15 MR. GALATI: Thank you, Commissioner.

16 Basically, Commissioner Laurie, this --
17 what has happened in this case, I'm going to first
18 talk about there are two issues. There is the
19 timing of the Final Determination of Compliance
20 with the South Coast, which I'm going to talk
21 about later in our presentation. But the first
22 issue has to do with the Magnolia Power Project,
23 which is owned and will be financed by the
24 Southern California Public Power Authority, which
25 is seven cities participating. One of those

1 cities that is participating is the City of
2 Burbank. The City of Burbank will also operate
3 this project.

4 It is important to note that this
5 project will be built and operated on the City of
6 Burbank site, through a lease agreement. And --

7 PRESIDING MEMBER LAURIE: And has that
8 been completed that?

9 MR. GALATI: I know that the Letter of
10 Intent between the lease, on the lease has been --
11 but let me check to see.

12 MR. BLOWEY: That has been negotiated
13 and agreed by the parties. It has not been
14 executed yet.

15 PRESIDING MEMBER LAURIE: Okay. Has the
16 city acted on it yet?

17 MR. BLOWEY: The -- actually, Rich
18 Murillo, who is on the phone, could give you the
19 -- an answer to that. He's the City Attorney.

20 PRESIDING MEMBER LAURIE; Okay. We
21 don't have to do that now. I'll reserve the
22 question.

23 MR. GALATI: The project, which is a
24 combined cycle more efficient unit, the purpose of
25 this project is twofold. It's to provide the

1 participants a vehicle and an ability to get
2 together where they would not normally be able to
3 build this kind of efficient and larger size
4 project individually, put it together on an
5 existing brownfield site, take advantage of all of
6 the infrastructure that's in place. And so the
7 project, that's why the project's on the City of
8 Burbank.

9 In addition, the City of Burbank, who
10 will operate it, is the City of Burbank Water and
11 Power. The project has been designed to use all
12 of the reclaimed water that's available to it, and
13 in order to use all the reclaimed water that's
14 available to it, there is an existing City of
15 Burbank NPDES permit. This is a permit that
16 allows a combined discharge from the reclamation
17 plant, i.e., the water treatment plant, that then
18 delivers reclamation water to a couple of
19 different places.

20 One area the reclamation water goes to
21 currently, now, existing goes to the City of
22 Burbank steam plant --

23 PRESIDING MEMBER LAURIE: And the
24 permitting agency is the local Regional Water
25 Quality Control Board, following federal

1 regulation.

2 MR. GALATI: That is correct. And
3 that's the Los Angeles region.

4 PRESIDING MEMBER LAURIE: Okay.

5 MR. GALATI: That permit, which is in
6 effect at this point, during data adequacy there
7 was some confusion about what the -- where the,
8 and I'll call it blowdown, it's the cooling tower
9 blowdown, where the blowdown would go. At one
10 point Staff was under the impression, and we
11 clarified, the blowdown does not go back to the
12 reclamation plant head works. What will happen
13 is, as water is coming by, this is reclamation
14 water that is being discharged into the Burbank
15 Western Wash, water will be siphoned off of that
16 line, and that is the same way it's happening now
17 at the steam plant. It will be used and consumed
18 in the power plant process.

19 The blowdown will then be placed in a
20 tank and it will be sent back to the discharge
21 line, which will eventually be discharged under
22 the existing permit to the city of -- the Burbank
23 Western Wash.

24 The project received a letter in August
25 30th of last year, to support data adequacy, that

1 this was basically the same type of operations
2 that were going on at the site now, and that would
3 be covered by the existing permit. The project
4 went forward on that basis.

5 Even in that letter at that time, NPDES
6 permits have a five-year life. That particular
7 permit needs to be renewed every five years. The
8 first letter that was received by the regional
9 board identified that that -- that the project
10 would basically be -- any modifications to the
11 permit to reflect the new units would be reflected
12 in the normal renewal process, and that was
13 scheduled, that is scheduled to take place, and I
14 believe that that will be completed by 2003, or --
15 yeah. During 2003.

16 So the next thing that happened was
17 there was another letter, basically at the
18 Informational Site Visit, a representative of the
19 regional board had -- took issue with that there
20 might be a problem because of two owners. That
21 SCPPA owning the facility may be relevant to the
22 ability to use the City of Burbank permit.

23 There were, to follow up and answer
24 those questions, there was a meeting of our
25 representatives with the Regional Water Quality

1 Control Board, which, although it seemed to be a
2 favorable meeting, the end result of that meeting
3 was a January 9th letter -- actually, January 8th
4 letter, which basically said that because the
5 project was going to be owned by somebody other
6 than the City of Burbank, it couldn't be covered
7 under the existing permit.

8 At the same time, the Staff Assessment
9 had come out, and proposed a condition, Soil and
10 Water 8. That condition set forth if ownership is
11 an issue, the project shall get its own NPDES
12 permit. At the workshop we agreed to that
13 condition. Discussion was held that that
14 condition, that Staff's position was that
15 condition may not be sufficient, that the project
16 should apply for its own NPDES permit.

17 We then went away from that Staff
18 Assessment, firm in our belief in the law that the
19 project does not require its own permit. Had
20 further meetings with the Energy -- excuse me,
21 with the Regional Water Quality Control Board,
22 which resulted in a third letter. And in this
23 letter, it's clear that ownership is not
24 controlling, and what is controlling is that this
25 project can be covered under the existing NPDES

1 permit, and will be renewed prior to the project's
2 commercial operation.

3 It's important to note, though, that
4 renewal is the normal renewal process that was
5 reflected in the very first letter. This is not a
6 determination that the Magnolia Power Project
7 causes the permit to need to be renewed. It will
8 just be covered and specifically mentioned in the
9 new permit.

10 Staff has taken the position that -- and
11 we heard about this, we talked at the initial
12 Staff Assessment workshop, and then as we started
13 getting closer to the Final Staff Assessment we
14 received a memo which set forth that Staff's
15 position, that in order to make a finding of LORS,
16 the project would need to apply for an NPDES
17 permit, and that the permit conditions in draft
18 form should come out of the regional board so that
19 Staff could make a determination of compliance
20 with LORS.

21 PRESIDING MEMBER LAURIE: What do we
22 have in the record as of this date regarding the
23 position of the water board that supports your
24 statement that no modification to the current
25 permit is required?

1 MR. GALATI: We don't. The modification
2 will occur in the same fashion it would occur
3 before. The California Toxics Rule, which had
4 been promulgated after the issuance of this
5 permit, that the project, i.e., the City of
6 Burbank's permit, would need to be updated during
7 its next renewal cycle to comply with the
8 California Toxics Rule.

9 PRESIDING MEMBER LAURIE: And when is
10 that?

11 MR. GALATI; That is in 2003.

12 PRESIDING MEMBER LAURIE: Okay. So is
13 it the position of the regional board that no new
14 permit be issued for the current application?

15 MR. GALATI: That's our understanding,
16 based on the February 13th letter.

17 PRESIDING MEMBER LAURIE: Okay. But we
18 don't have anything in writing that says that that
19 is their position, at this point.

20 MR. GALATI: Actually, the February 13th
21 letter says that it can be covered under the
22 existing permit, as renewed.

23 PRESIDING MEMBER LAURIE: Okay. And
24 that's docketed information.

25 MR. GALATI: That's correct. And I'm

1 sorry, it's February 13th, and that was docketed.

2 It says, based on the information
3 received as of this date, the regional board staff
4 has determined that the new SCPPA power plant
5 units can be covered under the City of Burbank's
6 existing NPDES permit when the permit is renewed.

7 And then the letter goes on to state
8 that the project, that the new City of Burbank
9 NPDES permit, when renewed, will reflect the
10 California Toxics Rule. And so we know that the
11 limits in the new permit for the City of Burbank,
12 both its waste -- its reclamation plant, the steam
13 plant, and now the Magnolia Power Project, that
14 those effluent limits would change from the
15 existing permit.

16 PRESIDING MEMBER LAURIE: Okay. Let me
17 stop you there for a moment.

18 Mr. Reede, what has Mr. Galati said up
19 to this point that you disagree with?

20 MR. REEDE: Well, Commissioner Laurie,
21 basically he didn't read the rest of the
22 particular paragraph. And Dave Abelson, my
23 attorney, can speak to that.

24 However, if you read the next sentence
25 to the statement that he just read, in reaching

1 this determination the regional board staff notes
2 that the existing NPDES permit must be revised
3 prior to City of Burbank commencing operation of
4 the Magnolia Power Project. And I think that's --

5 PRESIDING MEMBER LAURIE: Okay. I'm
6 going to stop you there.

7 MR. REEDE: -- that's material --

8 PRESIDING MEMBER LAURIE: I'm going to
9 stop you there. Does that sentence say what it
10 says in English, or do you dispute that?

11 MR. GALATI: No. I dispute that taken
12 out of context it doesn't mean the Magnolia Power
13 Project causes this permit to be revised. It has
14 to be revised under its normal renewal process,
15 which the reclamation plant, it's that project --
16 that, as pointed out in my brief, that permit will
17 need to be revised whether the Magnolia project
18 withdraws its application from the Energy
19 Commission at this point or not.

20 PRESIDING MEMBER LAURIE: Okay. Well,
21 why is it -- I'm really missing something. Why is
22 it relevant which regulatory scheme requires the
23 revision to the permit? It's clear that the
24 control board is requiring a revised permit before
25 operation. Okay. So why do we care, under --

1 whether it's regulatory scheme A or regulatory
2 scheme B that requires it, it's clear that you
3 need a revised permit before you flip the switch.

4 MR. GALATI: I think it's only relevant
5 to this point, Commissioner Laurie, is it's
6 relevant to -- as opposed to a greenfield project
7 coming in and requiring a new permit, where the
8 Energy Commission has often taken the view that
9 the permit standards need to be in draft form
10 before it would make a licensing decision. This
11 project is very much like the Contra Costa Unit 8
12 project, in which a draft permit was issued, but
13 it was clear that the final permit, because it had
14 not taken into account California Toxics Rules,
15 that the effluent standards would change
16 substantially, that the Energy Commission allowed
17 the project to go forward through the Evidentiary
18 Hearing and get its license with a condition that
19 says you must get the final permit and comply with
20 it, or not operate.

21 So I bring that distinction up to
22 support our argument that the Commission has the
23 authority and has in past cases made a finding of
24 determination of LORS without looking at the
25 particular numbers, but by condition. Which is

1 what we would request, that we go forward to
2 Evidentiary Hearings, make out base best case to
3 you, to deserve a condition.

4 HEARING OFFICER GEFTER: Mr. Galati, is
5 there an existing draft permit for the SCPPA
6 project?

7 MR. GALATI: No, there isn't. There is
8 an existing permit that allows them to operate
9 today. And it must be renewed prior to Magnolia
10 operation. It is a coincidence of the dates.

11 PRESIDING MEMBER LAURIE: And according
12 to the board, that existing permit is the only
13 thing that they're demanding be in existence at
14 the time that the project is permitted. Is that
15 your understanding?

16 MR. GALATI: At the time the project
17 operates. If they -- they demand that prior to --

18 PRESIDING MEMBER LAURIE: The existing
19 permit is all that's needed at the time of
20 licensing.

21 MR. GALATI: Yeah, that's our position.
22 And our understanding was up until this February
23 13th letter, that was their position, as well.

24 PRESIDING MEMBER LAURIE: Okay. So
25 Staff, it appears as if the appropriate state

1 agency is saying you can use the current permit
2 for licensing, but by the time you go to operation
3 you need to revise it. Do you read anything
4 different than I do?

5 MR. ABELSON: I thin, Commissioner
6 Laurie, that several points need to be made.

7 Number one, I don't think the LA
8 Regional Water Quality Control Board has taken any
9 position on what our procedures here at the Energy
10 Commission, which entail both LORS compliance and
11 also CEQA compliance, require --

12 PRESIDING MEMBER LAURIE: Let's talk
13 about LORS compliance first.

14 MR. ABELSON: Yes, sir.

15 PRESIDING MEMBER LAURIE: They're the
16 agency. They know what needs to be complied with
17 in order to meet their own regulations. And the
18 February 13th letter appears to tell us what
19 they're looking for from the aspect of licensing.
20 So from -- on the LORS perspective, do you
21 disagree with it?

22 MR. ABELSON: I don't disagree with the
23 letter, but I do disagree strongly with the
24 position the Applicant is taking as a legal
25 matter, and let me explain why.

1 PRESIDING MEMBER LAURIE: Okay. Well,
2 let's try that again. As I read the letter, the
3 appropriate state agency appears to say you can
4 use the current permit for licensing and there
5 will be compliance with LORS. Do you disagree
6 with that?

7 MR. ABELSON: I don't -- yes, I do
8 disagree with that. I don't think the Los Angeles
9 Regional Water Quality Control Board has taken any
10 position on what is required in our procedure,
11 under our regulations and our statutes for a six
12 month siting case, which is what this is. What
13 they are saying is before this Applicant can
14 discharge one ounce of water, they will need a
15 revised permit, and that will include significant
16 new standards, including toxics standards. And I
17 don't believe that the water board is taking any
18 position, at least not that I'm aware of, on what
19 is or is not required in our procedures.

20 PRESIDING MEMBER LAURIE: Okay. I won't
21 comment further on that point.

22 Let's go to the representative of the
23 water board.

24 HEARING OFFICER GEFTER: Okay. That
25 would be Dr. Tony Rizk.

1 MR. ABELSON: Did we get the other --

2 MR. GALATI: And Mike Lauffler.

3 (Inaudible asides.)

4 HEARING OFFICER GEFTER: Is David Hung
5 on the line?

6 MR. HUNG: Yes.

7 HEARING OFFICER GEFTER: Yes. Have you
8 been listening to the conversation?

9 MR. HUNG: Yes, I did.

10 HEARING OFFICER GEFTER: Could you
11 comment for us on the position of the Regional
12 Water Quality Control Board?

13 PRESIDING MEMBER LAURIE: Sir, could you
14 speak up to the best of your ability?

15 MR. HUNG: My name is David Hung. I'd
16 like to refer this, any comment, to Winnie Jesena,
17 who is the Senior Water Resource Control engineer
18 for this particular permit. Dr. Tony Rizk, he has
19 a part in there for this one. So I would like to
20 refer to Winnie.

21 HEARING OFFICER GEFTER: Okay. Is she
22 on the phone with you right now?

23 MR. HUNG: Yes.

24 MS. JESENA: Right here.

25 HEARING OFFICER GEFTER: Thank you.

1 Please tell us your name and identify your
2 position for us, please.

3 MS. JESENA: I am Winnie Jesena, I am a
4 Senior Water Resource Engineer at the board, and I
5 am the one who provided the -- who supervised.

6 HEARING OFFICER GEFTER: I'm sorry,
7 could you spell your last name for us, please?

8 MS. JESENA: Jesena. It's spelled J-e-
9 s-e-n-a.

10 HEARING OFFICER GEFTER: Jesena?

11 MS. JESENA: Right.

12 HEARING OFFICER GEFTER: Could you
13 please speak slowly so that the court reporter can
14 understand your voice?

15 MS. JESENA: Yes, I will.

16 HEARING OFFICER GEFTER: Thank you.
17 Okay. Would you give us the position of the Water
18 Quality Control Board on the issues we've been
19 discussing?

20 MS. JESENA: Yes. We have an existing
21 permit for the City of Burbank. And I believe the
22 -- end of the permit. If we have to operate the
23 Magnolia Power --

24 HEARING OFFICER GEFTER: I'm sorry. Ms.
25 Jesena, we can't understand you. Could you speak

1 more slowly for us?

2 MS. JESENA: Hello.

3 HEARING OFFICER GEFTER: Yes, can you
4 hear me?

5 MS. JESENA: Okay.

6 HEARING OFFICER GEFTER: Could you
7 please speak slowly, because we can't understand
8 you.

9 MS. JESENA: Fine. The existing permit
10 for the City of Burbank only allows the properties
11 on this plant and the merchant plant of the -- of
12 the plant that's -- slurry to discharge -- that is
13 why I refer that even if it happen -- the Magnolia
14 Power Plant, this is the Magnolia Power Plant at
15 this plant, then there be City of Burbank --

16 HEARING OFFICER GEFTER: I'm sorry. We
17 really could not understand what you said. Could
18 you pull your mouth away from the phone and speak
19 more slowly, and just summarize what you just told
20 us?

21 PRESIDING MEMBER LAURIE: The problem is
22 the --

23 MS. JESENA: But I have to speak over
24 the mouthpiece --

25 HEARING OFFICER GEFTER: Yes.

1 MS. JESENA: Okay. Do you hear me
2 better?

3 HEARING OFFICER GEFTER: Yes.

4 MS. JESENA: Okay. After review and
5 discussing whether that application on the -- that
6 what you would like me to comment on?

7 HEARING OFFICER GEFTER: Yes, what is
8 the position of the water board on whether the
9 existing permit is sufficient for the project to
10 comply with LORS?

11 MS. JESENA: I don't know how -- now I
12 have the existing permit, it can only be for the
13 power plant. One is the reclamation plant, and
14 the other one is the existing steam plant. If
15 they would like to discharge from the Magnolia
16 Power Plant we have to revise the existing permit
17 to include the Magnolia Power Plant.

18 HEARING OFFICER GEFTER: And how much
19 time would it take to revise the existing permit?

20 MS. JESENA: We have been figuring that
21 if we can have a complete application from that --
22 we can issue the draft permit maybe in 60 days.

23 HEARING OFFICER GEFTER: Okay. And do
24 you have a complete application at this time?

25 MS. JESENA: Not yet.

1 HEARING OFFICER GEFTER: Okay. So from
2 the time you have a complete application it would
3 be another 60 days for a draft permit?

4 MS. JESENA: Yes.

5 HEARING OFFICER GEFTER: All right.
6 Could you hold on a minute and let me ask the
7 Applicant whether you intend to file more
8 information to accomplish a complete permit, a
9 complete application?

10 MR. GALATI: Yes, clearly we do, we are,
11 we're working on that with the City of Burbank,
12 very closely.

13 HEARING OFFICER GEFTER: And what's the
14 time for that? What's your timeframe?

15 MR. GALATI: Well, when we would file
16 additional information? That brings up an
17 important point. We received a letter of
18 incompleteness on March 6th. There are several
19 items that need to be addressed. The letter says
20 even though the application was filed in September
21 of last year, for the City of Burbank's renewal,
22 and was just amended recently to include
23 information about the Magnolia Power Project, the
24 application was not reviewed until the last week
25 or so. At that point in time, there were ten

1 deficiencies and a big caveat that says there
2 could be others that we haven't detailed.

3 One of the ones I want to make you aware
4 of is that in June of last year, the water board
5 sent a letter, and for lack of a better term it's
6 a 13267 letter, which is a letter requesting
7 information to support the renewal process of the
8 City of Burbank's permit. In that letter to
9 support the renewal process, the City of Burbank
10 was directed by the regional board to acquire
11 particular samples and tests of the discharge and
12 of the receiving water quality to permit renewal
13 of the permit.

14 In that letter, it says a minimum of 18
15 months' worth of test data must be collected to
16 support the renewal permit. The City of Burbank
17 has been working on that and has six to seven
18 months already collected. So if that information
19 is required for application completeness, which is
20 our understanding at this point, the permit
21 renewal cannot take place for at least 12 months.
22 So we're at a loss here as to the renewal of the
23 City of Burbank, as well as the term the Magnolia
24 Power Project can be covered under the existing
25 permit.

1 The Magnolia Power Project is
2 essentially replacing four older units at the
3 steam plant. The problem is going to be there
4 needs to be additional work with the regional
5 board to make it clear that everybody at the
6 regional board that we're working with understands
7 what this project is about. Clearly, ownership is
8 not an issue. It's operation that requires the
9 permit. We've made that clear. And it's
10 something that we're finding very difficult to be
11 able to respond to, as the Magnolia Power Project,
12 which is one part of this overall permitting
13 integrated facility scheme.

14 We certainly will continue to try to get
15 our application, but we are very concerned about
16 any draft permit that could come out in 60 days,
17 based on what we've been told.

18 MR. ABELSON: Commissioner Laurie, if I
19 just might observe a couple of things on that last
20 point.

21 First of all, it's very important that
22 you and Hearing Officer Geftter keep in mind that
23 what Staff is asking for and seeking is a
24 preliminary or draft NPDES permit. We have talked
25 Friday with several members of the LA Regional

1 Board, all of whom are on the phone right now,
2 including Dr. Rizk, and two supervisors, both of
3 whom are responsible for this particular project.
4 And I think it would be helpful to both of you if
5 you would be willing to allow them to respond to
6 that point that was just made by Mr. Galati, as to
7 what they're expecting and whether they can do it
8 in 12 months, because of the monitoring data, or
9 in 60 days, as was just indicated, and why.

10 PRESIDING MEMBER LAURIE: Okay. Well,
11 let me ask a question, first.

12 Mr. Galati, if the Committee accepts
13 your proposal to not require the revised permit
14 until operation, then how do we measure the
15 environmental consequences of the actions
16 necessary to meet the conditions of the revised
17 permit? You know as well as I do that CEQA does
18 not allow you to approve a project based upon the
19 obtaining of some subsequent permit of which you
20 don't know the environmental consequences?

21 So how do we, and let's take LORS aside.
22 Let's say the water board said we're telling you
23 that we feel in order to satisfy our regulations
24 all we need is the permit in place before
25 operation. Okay. That aside. Still, in order to

1 meet CEQA obligations, you have to know the
2 environmental consequences flowing from that
3 permit. So how do we handle that as part of the
4 Application for Certification process?

5 MR. GALATI: I would start first with
6 the environmental consequences of what would be
7 discharged, if the permit effluent limits were to
8 change. You haven't seen how they'll change. But
9 you have evaluated, Staff has evaluated the
10 environmental consequences of allowing the permit
11 -- of the discharge of the permit today, which
12 everyone acknowledges that the effluent limits are
13 likely to get more stringent and not bigger --
14 Staff has concluded --

15 PRESIDING MEMBER LAURIE: So you believe
16 the evidence will be that the current permit is
17 perhaps a worst case scenario.

18 MR. GALATI: Yeah. Now, that --
19 exactly. But I do understand the other portion of
20 the thrust of your question. It's not just the
21 discharge, but it could be what is the facilities
22 necessary that need to be placed on the back end,
23 for example, of a permit, to allow you to comply
24 with it.

25 Our answer to that would be, is that the

1 Commission is -- we don't anticipate having to do
2 that. We don't anticipate having to do that at
3 this point. It is difficult to tell. We can't
4 certify under oath that we won't. But we are
5 willing to take a license that limits only the
6 operations that we are proposing today. And we're
7 willing to take a condition that says if we cannot
8 get the permit, and make compliance with the
9 permit, with our existing facility as designed, as
10 presented to the Energy Commission, we will come
11 back in for an amendment that can have the full
12 environmental review necessary to ensure any CEQA
13 compliance and mitigation appropriate.

14 But to wait, to -- to require waiting
15 because of the potential that an amendment to the
16 project not contemplated at this time may have a
17 significant impact, what we're basically talking
18 about is this. The project can either comply with
19 the permit. If it cannot comply with the
20 permit --

21 PRESIDING MEMBER LAURIE: With the
22 current permit.

23 MR. GALATI: Correct. And if the new
24 permit is revised, and let's say it cannot comply
25 with the new permit. It could put treatment

1 facility in. It could go zero liquid discharge.
2 It could send its waste to Hyperion, which is a LA
3 regional -- and we understand, and we're not
4 asking you to analyze those options, and we would
5 clearly accept by condition that we cannot operate
6 anything other than this project as designed now,
7 without those options.

8 HEARING OFFICER GEFTER: Mr. Galati, I
9 think I want to back up a little bit. Before,
10 when you were talking about worst case scenario,
11 that the existing permit represents worst case
12 scenario. I think that's, from what -- everything
13 you've said, that's not the case; that the
14 existing permit may be less stringent than the
15 revised permit because of the California Toxics
16 Rules.

17 MR. GALATI: Yeah.

18 HEARING OFFICER GEFTER: So therefore,
19 in the future, when the existing permit is
20 revised, there will be more stringent requirements
21 imposed on the City of Burbank, and on the
22 discharge from the Magnolia project.

23 MR. GALATI: Yeah. I apologize --

24 HEARING OFFICER GEFTER: And so if --
25 and if you are then suggesting that in the future,

1 if that is the case, and the project would then
2 utilize zero liquid discharge or put in a
3 treatment plant onsite, that would require
4 tremendous new environmental review, and you would
5 have to do a CEQA analysis of those proposals.
6 And a question is, why wouldn't the Applicant at
7 this time go forward and present those
8 alternatives to the revised NPDES permit, as an
9 alternative to dealing with the issue as it stands
10 today?

11 MR. GALATI: Okay. I apologize if I
12 misspoke. What I meant by a worst case scenario
13 is the environmental evaluation of what the
14 constituents into the Burbank Wash and how they
15 affect the LA River, since the current permit
16 allows more than the new permit would, that that
17 is a worst case environmental analysis of their
18 effects. So I didn't mean to say that the permit
19 that would be granted under the California Toxic
20 Rule would in any way be less stringent. It's
21 because a less stringent permit was evaluated, and
22 the constituents are higher, that evaluation of
23 the environmental impacts on the aquatic life and
24 downstream, that is something that's already been
25 evaluated as a worst case.

1 Now, with respect to asking for
2 alternative disposal methods, or changing the
3 disposal methods at this point. Again, that puts
4 us in a place where we're looking at significant
5 delay in the process. We would have to prepare
6 that information, have Staff analyze it, and,
7 again, we're on a very, very tight schedule, as
8 pointed out in my brief.

9 We're willing, because of that tight
10 schedule, to take the risk that we would have to
11 come back in for a significant amendment. We also
12 believe in our heart of hearts that we're going to
13 be able to work it out with the water board, if
14 given sufficient amount of time prior to
15 commercial operation. We recognize we cannot
16 discharge, or the Magnolia Power Project cannot
17 operate as planned if that operation would cause
18 violations of the permit.

19 So the project would either not operate,
20 or the project would come in for an amendment.
21 And I do point out that that was allowed in other
22 cases, and we would look for that similar
23 treatment.

24 HEARING OFFICER GEFTER: In order to
25 have qualified for the six month process, the

1 project had to come in here and show us that there
2 were going to be no environmental impacts, and
3 that's why we could complete the six month process
4 in six months. At this point it's -- we've
5 already gone beyond the six months. And you're
6 suggesting that we license the project with the
7 possibility that there would be tremendous
8 environmental impacts on this issue, and that you
9 would have to go to zero liquid discharge or other
10 alternatives if you -- and file an amendment and
11 go through that whole process.

12 So that it sounds like you want to front
13 end it and get your license in close to six
14 months, and then spend another several months re-
15 analyzing it if, in fact, the project doesn't
16 comply with the revised NPDES permit.

17 MR. GALATI: All you would be licensing
18 is the project as described. As described, the
19 project has no environmental impacts in this area.
20 There is no chance of additional environmental
21 impacts until I come and ask you to amend the
22 project. We do not intend to amend the project.
23 We don't believe it will need to be amended. We
24 believe that the project can operate as designed.

25 And what I'm not -- I'm certainly not

1 arguing that we defer any mitigation of an
2 identified environmental impact. I'm pointing out
3 to you that the project, as designed, has none.
4 And that you can ensure it has no environmental
5 impact by saying you must comply with the new
6 permit. That's actually a compliance LORS. If
7 the project, and we'll even take a condition that
8 says if you have to add one piece of equipment to
9 make that, you're required for an amendment.

10 MR. ABELSON; Could I make a couple of
11 comments?

12 PRESIDING MEMBER LAURIE; And speak up,
13 David.

14 MR. ABELSON: Yes. First of all, I want
15 to state very clearly on the record that Staff is
16 most concerned about the CEQA issue. Clearly, we
17 do not have a project in front of us that has an
18 existing permit under which it can operate. The
19 water board has served notice, as of February the
20 13th, that a revised permit with the toxics rule
21 will be required before this project can operate.
22 And as Ms. Gefter has just pointed out, whether
23 that can be done with the existing project or not
24 is unknown.

25 The requirements for a six month project

1 in this agency are very clearly spelled out. And
2 we've articulated them and listed them in the
3 brief that we filed. But of particular importance
4 is the note that when a standard or ordinance is
5 expected to change between the time of filing and
6 the Application for Certification, information
7 from the responsible jurisdiction documenting the
8 impending change, the schedule of the change, and
9 whether the proposed change will comply with the
10 new standard, is required.

11 So we're dealing with a situation in
12 which an Applicant is coming in seeking a six
13 month review, albeit extended mutually for a
14 certain period of time, but the requirements of
15 that provision are very stringent and simply have
16 not been met in this case.

17 I do want to go back to the 60 day
18 offer, or proposal, that the water board has
19 suggested they can meet, because Mr. Galati has
20 suggested that that's impossible, given the 18
21 month monitoring requirement that the City of
22 Burbank is expected to comply with for toxics
23 purposes, of which they're only about six or eight
24 month into that process.

25 Again, I would be happy to summarize

1 what the water board people have told us about the
2 difference between a preliminary determination and
3 a final determination. But if the Committee is so
4 inclined, I would allow them to speak for
5 themselves. It is our understanding that with a
6 completed application, the water board believes
7 that they can process a preliminary determination
8 within 60 days, and that will provide us with the
9 CEQA information, among other things, that we
10 need, and will also at least establish a minimal
11 compliance with the six month process, as it's
12 outlined in our own regulations.

13 PRESIDING MEMBER LAURIE: What's the
14 difference between -- in the timing of the six
15 month and twelve month process? So that if we
16 said we're switching to 12 months, what additional
17 time obligations are therefore imposed in
18 regulations that do not appear in the six month
19 process, that we'd be obligated to?

20 MR. ABELSON: Well, I think one issue
21 that actually is something that I am not honestly
22 sure of the right answer to, in terms of the
23 statute and regulation, is I believe that if we're
24 in a 12 month process, that it would be not only
25 possible but legal, given the terms of our

1 regulations, to issue a final permit after our
2 certification.

3 What I'm reading in the statute for the
4 six month, and particularly in the regulations for
5 the six month, seems to require a preliminary
6 within 60 days of a completed application at the
7 water board, and a final within 100 days of that.
8 And I do not want to represent to you,
9 Commissioner, today, that the water board is or is
10 not in a position to issue a final within, say,
11 the next 100 days. I honestly don't know what
12 their position is on that.

13 If they would tell you that they cannot,
14 because they're still waiting for the completion
15 of the monitoring data, for example, then I would
16 suggest that as a matter of law, we would actually
17 have to go to the 12 month process.

18 PRESIDING MEMBER LAURIE: What about
19 additional notice and hearing requirements in the
20 12 month? So, let's say we're ready to go to
21 hearings. And we're -- we said okay, we're going
22 to 12 month, and, but we're going to go to
23 hearings next month. In the formality of our 12
24 month process, between the time you issue your
25 Preliminary Decision and that goes out, and you

1 come back for final Commission action, and you
2 need additional, beyond the Evidentiary Hearings,
3 additional opportunities to comment, how much more
4 time is added to the process simply by moving it
5 to 12 month?

6 MR. ABELSON: I will confess that I
7 cannot answer your question accurately today. I
8 simply don't know.

9 HEARING OFFICER GEFTER: There's no
10 difference in terms of a PMPD. There's a 30 day
11 comment period under the 60 day -- I'm sorry,
12 under the six month process and under the 12 month
13 process.

14 PRESIDING MEMBER LAURIE; So it's the
15 same under both.

16 MR. GALATI: Well, Commissioner Laurie,
17 and I hate to bring this up to the decision-maker,
18 but the six month requires the PMPD be issued 20
19 days after hearing, and there is no such
20 requirement in the 12 month. So that's the only
21 difference, from a timing standpoint, I could
22 find. I believe the 14 day wait for hearing after
23 issuance of the Final Staff Assessment is
24 applicable to both, and the noticing of at least
25 ten days is applicable to both. But that's the

1 only one that I could find.

2 PRESIDING MEMBER LAURIE: Okay. You
3 don't really care whether it's six months or
4 twelve months; you care about the date on which
5 you get a decision.

6 MR. GALATI: Correct.

7 PRESIDING MEMBER LAURIE: So if there
8 were a PMPD under the 12 month process within 20
9 days of the close of Evidentiary Hearings, it
10 wouldn't make any difference to you.

11 MR. GALATI: That's correct.

12 PRESIDING MEMBER LAURIE: Okay. I don't
13 necessarily want to hear anymore from the water
14 folks, at this point, but I would ask them to hang
15 on. I'm sorry, Ms. Gefter.

16 HEARING OFFICER GEFTER: I do have a
17 question, though, and that's with respect to the
18 report of wastewater discharge, which under the
19 six month process we need within 100 days of data
20 adequacy. It's not even mentioned in the regs for
21 the 12 month process. But if either the Applicant
22 or the water board can explain to us where the
23 report of waste discharge is, we --

24 MR. GALATI; I think I will ask --

25 HEARING OFFICER GEFTER: Can you answer

1 that question?

2 MR. GALATI: -- Ms. Shanks to describe
3 the process.

4 HEARING OFFICER GEFTER: Just summarize
5 it real quickly, because I just want to know if
6 there is an existing report of waste discharge.

7 MS. SHANKS: Yes. My name is Pat
8 Shanks. I work for McCutchen Doyle, representing
9 SCPPA.

10 The report of waste discharge is a part
11 of the application for the permit. The report of
12 waste discharge is what -- that's under state
13 water law, how the State Water Code refers to the
14 application for a discharge permit. That report
15 of waste discharge is submitted together with
16 forms that are federal forms for the NPDES permit.
17 And when the permit is ultimately issued, it
18 serves as both waste discharge requirements under
19 state law, and an NPDES permit under federal law.

20 The report of waste discharge for the
21 entire permit was actually submitted in September.
22 As you recall, Mr. Galati said that we're -- the
23 City of Burbank is in its normal permit renewal
24 process, and in August the regional board staff
25 requested the City of Burbank to submit three

1 forms relevant to the renewal of the permit.

2 Those forms were filed in September, and
3 for some reason they were never reviewed for
4 completeness. We recently, the City of Burbank
5 recently supplemented those forms with information
6 specifically regarding the Magnolia Power Project.
7 And we received -- actually, we requested a very
8 quick turn-around on the determination of
9 completeness, which resulted in the letter that we
10 recently received, identifying at least ten items
11 which are incomplete with regard to the permit
12 application as it stands.

13 Five of those relate to the power plant.
14 Five of them relate to the reclamation plant,
15 which are both permitted under the same permit.

16 HEARING OFFICER GEFTER: Thank you.

17 PRESIDING MEMBER LAURIE: Okay. We'll
18 talk about the FDOC. Gentlemen, I will read
19 carefully the briefs on the issue. I can tell you
20 today that I am concerned about the clear
21 requirement of CEQA that the totality of a project
22 be analyzed. And I believe there is at least one
23 major case on point that says you cannot approve a
24 project subject to a discretionary permit, without
25 analyzing the environmental impacts of that

1 discretionary permit.

2 I believe that that's the law, as I sit
3 here today. I promise you that I will carefully
4 read the information that everybody has submitted.
5 I am anxious to really move this along in a timely
6 fashion, if I feel the law allows us to do that.

7 Even if the law doesn't allow us to do
8 it, we can still go to hearings, and deal with it
9 there if that's the Applicant's choice. So that
10 is a big question that the Committee's going to
11 have to look at.

12 Okay.

13 MR. ABELSON: Commissioner Laurie,
14 before you move to FDOC, because we did file
15 coincident at the same time, I'd just like to
16 state very briefly, there are five power plant
17 cases that the Applicant's cites with the
18 proposition that this entire exercise can be put
19 over until after certification.

20 Number one, Staff is asking for a
21 preliminary filing before Evidentiary Hearings,
22 not a final. Number two, and I'm happy to go into
23 it in as much detail as you wish, not a single one
24 of those cases is apposite to the facts in
25 question, and I'll be happy to explain each one.

1 I haven't had an opportunity, because we filed
2 coincident together. So that's as you wish, but
3 there are five cases, our cases here at the
4 Commission, that are cited, and none of them
5 actually stand for what the Applicant is asking,
6 which is that no preliminary be filed in this case
7 before we go to Evidentiary Hearings.

8 HEARING OFFICER GEFTER: Right. And I
9 would just want to clarify one thing, too, before
10 we move on to the FDOC.

11 My understanding from the discussion
12 regarding the report of waste discharge is that
13 that is part of the application for your draft
14 NPDES permit. And, but under the six month
15 process, we are required by regulation to have a
16 report of waste discharge within 100 days of data
17 adequacy. So that would mean that unless we have
18 that report of waste discharge, we cannot certify
19 the case as a six month case.

20 MR. GALATI: You have it. It was
21 docketed.

22 HEARING OFFICER GEFTER: The report of
23 waste discharge?

24 MR. GALATI: The report of waste
25 discharge, not the -- not their action upon the

1 report of waste discharge.

2 HEARING OFFICER GEFTER: It has to be
3 approved by the water board within 100 days.

4 MR. GALATI: If I could just address one
5 thing. I want to point out that at the time, I
6 mean this sounds like -- and I want to make sure
7 that the Applicant's not sitting on their hands in
8 this case. There was a letter on August 30th from
9 the water board requiring no permit. That's why
10 the Energy Commission saw it as data adequate.
11 That's why we proceeded in good faith on the six
12 month process.

13 Things have changed. I would again
14 focus on the substance of the Contra Costa case,
15 and it needs to be explained because in that case,
16 the new units could not be covered under the
17 existing permit because of the addition of the new
18 units, not because of the normal renewal.

19 So that's why they filed for a draft.
20 They get a draft, and it says the effluent limits
21 must be X. There's a subsequent determination
22 that the California Toxics Rule is going to change
23 many of those numbers. Yet that project is
24 allowed to go forward with a condition, without a
25 draft of the final numbers, the California Toxic

1 Rule numbers, and yet this project won't be
2 allowed the same -- afforded the same.

3 Staff points out that it's because you
4 don't have a draft. We don't. We have something
5 better. We have a permit. They never had one,
6 not that would cover those units. The water
7 board's letters make it clear that if there were
8 no renewal, this project could operate as
9 described under the permit. It's the renewal that
10 brings into place the more stringent limitations,
11 and I think that's an important point, and that's
12 why I cite it; not on the difference between a
13 preliminary and a final, but on the difference
14 that the preliminary and final look extremely
15 different.

16 MR. REEDE: Excuse me, Commissioner
17 Laurie. There was one issue that was left hanging
18 that had been brought up by the Applicant
19 regarding the water board's request that they
20 perform 18 months of monitoring or else they
21 wouldn't determine that the application was
22 complete.

23 In speaking with the water board, Staff
24 has determined that the water board is in
25 agreement that they can define the application

1 that is complete with the existing data. And I
2 think that's relevant in that in looking from
3 scheduling perspectives, the water board's stating
4 that 60 days from when they have the complete
5 application they can issue us a draft permit.

6 The water board industrial engineer, Dr.
7 Tony Rizk, I believe is on the line. He's the one
8 who made the statement.

9 PRESIDING MEMBER LAURIE: Okay. But the
10 water board is also taking the position formally
11 that currently, they do not have the complete
12 application. That's my understanding.

13 MR. REEDE: Right.

14 PRESIDING MEMBER LAURIE: Okay. Going
15 back to Mr. Galati's statement. I'm really going
16 to have to think about the issue, because I'm not
17 sure that it's been obfuscated. As I read the
18 Water Quality Control Board's letter, it says you
19 can continue to operate under the current permit,
20 but the Magnolia Power Project needs a revised
21 permit. That's how I read their letter. And I
22 don't know how you can read it differently.

23 They're saying you can continue through
24 your application because we don't care about the
25 application, but they've made it clear that the

1 current permit will not be applicable to the
2 Magnolia Power Project.

3 MR. GALATI: My point is what's the
4 point of revising an entire facility permit
5 because of the Magnolia Power Project, or getting
6 a new one for the Magnolia Power Project?

7 There is a distinction there, and it is
8 one that they're reflecting by how you can be
9 covered under the existing permit. It doesn't say
10 that the power project needs to get its own
11 permit, which, if that were the decision, I can
12 understand the logic flow from there. But that's
13 not the decision, and it's because this is a
14 integrated replacement facility using the same
15 processes that the old units use.

16 PRESIDING MEMBER LAURIE: Okay. Well, i
17 understand that. I understand that it does not
18 appear that they're asking you to get a whole new
19 permit. They're asking you to revise the current
20 permit. And -- correct?

21 MR. GALATI: I'll have Pat Shanks
22 describe this more to you.

23 MS. SHANKS: When the regional board
24 raised the issue of separate ownership requiring a
25 separate permit, we discussed with them the fact

1 that ownership was not an issue, and that to the
2 extent they were concerned, that the project would
3 not -- would need new limitations under the CPR
4 process. What we pointed out to them was that
5 it's a happy circumstance that, in fact, the
6 existing permit which it says can cover the
7 project, will in fact be renewed prior to the time
8 that the project comes online in 2004.

9 And so as Scott has explained, the
10 entire -- the permit will be renewed before 2004,
11 which is the date that the project is intended to
12 go online.

13 PRESIDING MEMBER LAURIE: I understand
14 that. But will --

15 MS. SHANKS: Okay. And so it's not --

16 PRESIDING MEMBER LAURIE: -- will not
17 the renewal obtain -- contain conditions?

18 MS. SHANKS: The renewal will contain --
19 it will be like all permits, will have conditions,
20 but the -- I think that the more -- the
21 significant change that people are concerned about
22 is the effluent limitations based upon the
23 California Toxics Rule. That is the significant
24 change that will occur in the permit, and everyone
25 recognizes that will be the case.

1 That was recognized, it should have been
2 recognized in August, when the application was
3 deemed to be data adequate. Nothing has changed.

4 PRESIDING MEMBER LAURIE: Okay. If the
5 revised permit contains those limitations --

6 MS. SHANKS: Yes.

7 PRESIDING MEMBER LAURIE: -- as you
8 would expect.

9 MS. SHANKS: Yes.

10 PRESIDING MEMBER LAURIE: Do we need to
11 wait and see the revised permit before we
12 environmentally examine the limitations that you
13 expect to come out of the new permit?

14 MS. SHANKS; As Mr. Galati has
15 explained, the project before you has no
16 environmental impacts that have not been
17 considered. If the -- and the project expects to
18 be able to operate as this plant has operated for
19 30 years.

20 PRESIDING MEMBER LAURIE: Within the
21 limitations.

22 MS. SHANKS: Within the limitations.
23 However, if it finds that it cannot, it has
24 several options available to it, some of which
25 have no environmental impacts, others that might

1 have environmental impacts. But it's not possible
2 for the City of Burbank and SCPPA to decide today,
3 or even 60 days from now, how best to optimize the
4 use of reclaimed water, and at the same time meet
5 these limitations, these new limits.

6 And so that's why we have to wait until
7 the limits are finally determined before we put
8 the engineering work into deciding how best to
9 meet them. And if that requires -- if the method
10 that's determined to meet those limitations
11 requires an amendment to the license, the project
12 will come back to you and request that amendment.
13 And at that time, you can look at the proposal for
14 meeting those limitations and determine whether
15 there are CEQA impacts that need to be litigated.

16 PRESIDING MEMBER LAURIE: Speculate for
17 me for a moment as to -- and I'm not holding you
18 to this -- but what kind of conditions will you --
19 would you expect out of the revised permit?

20 MS. SHANKS: I would expect to have more
21 stringent limitations on metals, primarily.

22 PRESIDING MEMBER LAURIE: That you can
23 meet with the current design.

24 MS. SHANKS: The current design of the
25 Magnolia Power Plant, yes. It depends on what --

1 one of the options, for example, is to make
2 changes in the reclamation plant itself, so that
3 it is providing water that has lower levels of
4 metals in the first place. And consequently, as
5 the water is used for cooling, it doesn't -- the
6 resulting water, when discharged back into the
7 reclamation line, would not exceed discharge
8 limitations.

9 So there are possible -- because this
10 project is being built into an existing power
11 plant, it's really just replacing four existing
12 power generation units within the existing power
13 plant. And that power plant has been -- it
14 operates in conjunction with the reclamation water
15 plant, or the reclaimed water plant. There are a
16 number of options available for dealing with the
17 new permit limitations, either at the power plant
18 or at the reclamation plant.

19 So it may not require changes in the
20 power plant project.

21 HEARING OFFICER GEFTER: A couple of the
22 options that Mr. Galati mentioned were water
23 treatment plant onsite or a zero liquid discharge,
24 both of which require additional space on the
25 site. So if those were to be options down the

1 road after certification, would there be available
2 space on the site to build those facilities? Or
3 shouldn't those options be considered right now as
4 part of the environmental review of Staff before
5 they issue a Final Staff Assessment?

6 MR. GALATI: I think I'll go ahead and
7 answer that one. There is room on the site for
8 some treatment capacity. But, again, that may not
9 be the only way to comply. If the reclamation
10 water plant provides better reclaimed water, maybe
11 we don't need all of that treatment on the back
12 end. Zero liquid discharge, there is no room on
13 the site for evaporation ponds, so the only option
14 available is the very expensive drying option 2A,
15 and there is no place to put the brine stream that
16 results, so you have to dry it all the way down to
17 a solid. That's very expensive.

18 And we can go into Evidentiary Hearings
19 why that is not appropriate for the project,
20 unless you're interested in that solution now. I
21 mean, I can give you a brief synopsis. Okay,
22 hearing none.

23 The CEQA impacts under the project would
24 be the impacts associated with the discharge.
25 That is the main impact that is affected by this

1 change in permit.

2 Let's take a look at if the permit
3 changed and it required treatment, some piece of
4 equipment. From that perspective, yes, there
5 might be some noise impacts from the equipment.
6 There might be some visual impacts from the
7 equipment. There might be some air emissions for
8 the equipment. And, yes, that is a potential
9 problem if the project cannot meet. But it's
10 absolutely clear, like in Metcalf, when you didn't
11 have the industrial discharge permit conditions,
12 you didn't know what treatment was going to have
13 to be on the back end because they did not give
14 you the industrial permit. You allow for the
15 specific opportunity for -- to come back in for
16 that amendment to be evaluated, if it is
17 necessary.

18 And what we're saying and prepared to go
19 forward that we don't believe it's necessary. All
20 the impacts from this project, the discharge
21 impacts from the -- with the limits as described,
22 presenting worst case analysis of what the
23 discharge could do. You've done your obligation
24 because you know it's going to be better than
25 that. The only thing you don't know is what

1 equipment may be necessary to achieve that result.

2 And we're saying we will accept by
3 condition, we believe the law already requires
4 this, but we will accept it as a specific in our
5 condition to avoid the CEQA problem, to say if you
6 do anything different than what you're planning as
7 described, you must come in for an amendment with
8 full CEQA review. And we're prepared to go
9 forward because the timing is so critical to us,
10 and we want to get on with the water board and
11 deal with the water board in the timeframe it will
12 take to deal with the water board.

13 Sixty days from now, I'm sure that you
14 can come out with a permit that is absolutely the
15 most stringent permit ever. That's the reason the
16 effluent information is necessary. That's the
17 reason that the receiving water's information is
18 necessary. And so in 60 days, we might be before
19 you with a permit that basically says we need
20 equipment, when that might not be the final permit
21 as the process goes through with the regional
22 board.

23 And we don't believe that there is a
24 CEQA problem as long as you make it clear in the
25 license, and clear by condition, that this project

1 cannot do anything but operate with that final
2 permit with the existing equipment as described.
3 And we're willing to take such a thing.

4 HEARING OFFICER GEFTER: I want to just
5 clarify another thing with respect to the report
6 of wastewater discharge. As you indicated, the
7 application is on file. It's in dockets. But is
8 there an approved report from the water board at
9 this point?

10 MR. GALATI: NO, there has not. The
11 approved -- as I understand it, the approved
12 report of waste discharge actually becomes your
13 waste discharge requirements, which that is at the
14 end of the permit process. Yeah. And unless Pat
15 gets up and says something different, I'm right.

16 PRESIDING MEMBER LAURIE: She's not
17 getting up yet.

18 MR. GALATI: That's a first, that I'm
19 right.

20 PRESIDING MEMBER LAURIE: Okay. FDOC.

21 MR. REEDE: Excuse me. Commissioner
22 Laurie, could we have the two gentlemen from the
23 South Coast Air Quality Management District
24 brought in on the phone, please?

25 HEARING OFFICER GEFTER: That would be

1 Mr. John Yee --

2 MR. REEDE: John Yee, and Knute
3 Beruldsen.

4 PRESIDING MEMBER LAURIE; And I want to
5 thank the people from the Water Quality Control
6 Board. As we move forward, the Committee will be
7 making specific requests of you prior to the
8 Evidentiary Hearing, to ensure that we are
9 familiar with the status of the issues as we've
10 discussed today. So let me thank you very much
11 for your time -- excuse me -- and I think the
12 Committee in the formal process will be
13 communicating with you in some fashion.

14 So my appreciation for your time today,
15 gentlemen, and lady.

16 (Inaudible asides.)

17 MR. REEDE: Commissioner Laurie, Hearing
18 Officer Gefter, per the original schedule we were
19 to have received the Final Determination of
20 Compliance on February the 15th. However,
21 immediately after -- well, during and after the
22 Staff Assessment workshop, the Applicant informed
23 us that they had made a major change to the
24 project by removing the auxiliary boilers. This
25 precipitated a need by the South Coast Air Quality

1 Management District to re-do the modeling on the
2 potential air impacts to both the air and to
3 public health.

4 HEARING OFFICER GEFTER: Okay. Is that
5 Mr. Yee on the phone?

6 MR. YEE: Yes, we are here, Mr. Yee and
7 Mr. Beruldsen.

8 HEARING OFFICER GEFTER: Okay. Could
9 you hold on just a second, while Mr. Reede
10 finishes his comments.

11 MR. YEE: Okay.

12 MR. REEDE: Okay. The Air Quality
13 Management District had to re-do their modeling,
14 as did Commission Staff. Because the air district
15 had to re-do their modeling, they had to issue an
16 additional notice that there was a major revision
17 to the project. Realizing that we could no longer
18 meet the February 15th date of review of a FDOC,
19 we negotiated with the air district for their best
20 effort. And to this date, they have put forth
21 their best effort. However, I will let Mr. Yee
22 and Mr. Knute Beruldsen describe where in the
23 process they are.

24 We will require two weeks for completion
25 of our analysis of their FDOC and to issue our

1 supplement, once that's been completed. We're not
2 changing the time period that's required for our
3 review once we get an FDOC.

4 PRESIDING MEMBER LAURIE: Why does it
5 take two weeks, Mr. Reede? We have a person
6 working on it full-time, do we not?

7 MR. REEDE: We have a person working on
8 it part-time. Each of the Staff has approximately
9 four different cases. Once that FDOC comes in,
10 then they can prioritize it. However, until they
11 get it, it's not priority.

12 PRESIDING MEMBER LAURIE: Okay. But
13 you're saying two weeks from the time that we get
14 it.

15 MR. REEDE: Yes. From the time that we
16 get the FDOC, it would take the Staff person
17 approximately six to seven working days, and then
18 there are approvals. I get it, the program
19 manager gets it, and then the office manager. If
20 it comes back, if it's going to be a
21 recommendation of other than approval, then it has
22 to go to the Deputy Director before we would issue
23 the document.

24 PRESIDING MEMBER LAURIE: That's an in-
25 house problem, Mr. Reede, that we will -- we need

1 to address separately.

2 MR. REEDE: Okay.

3 PRESIDING MEMBER LAURIE: And I
4 recognize that that's the procedure that you
5 follow, and I -- I respect that.

6 MR. REEDE: But we attempt to do it as
7 quickly as possible, but we have to realize that
8 we are constrained by labor hours.

9 PRESIDING MEMBER LAURIE: We're only
10 constrained by how we choose in-house to process.

11 MR. REEDE: Okay.

12 PRESIDING MEMBER LAURIE: Thank you.

13 Let's hear from the Applicant before we
14 hear from the folks from the district.

15 MR. GALATI: We recognize the FDOC is an
16 important component in the Energy Commission
17 process, so we'd point out to you that there are
18 projects that have gone forward where the FDOC has
19 been allowed in at Evidentiary Hearing.

20 We do, however, understand that what was
21 basically removed was the auxiliary boiler. In
22 the scheme of things, what that has happened is a
23 few constituents have gone up, a few have gone
24 down. There's been positives and negatives. The
25 offset numbers have changed. We want to let you

1 know that the modeling that we submitted to the
2 air district was also submitted to the Energy
3 Commission. So Energy Commission Staff has seen,
4 at least from our perspective, the modeling that
5 they would normally require to look at what that
6 change is.

7 From the FDOC, our understanding would
8 be the offset numbers might change a little bit,
9 the tables might change a little bit, and the
10 conditions of the auxiliary boiler come out.
11 Other than that, it's the typical administrative
12 changes in the wording of conditions from a
13 preliminary to a final, based on the Energy
14 Commission's comments, based on our comments. We
15 do recognize Staff needs to go through those,
16 understand them, and plug them in to the Staff
17 Assessment.

18 But we, again, because we're very
19 tightly schedule constrained, if the FDOC is going
20 to be delayed much longer we would like to proceed
21 to Evidentiary Hearing and get the notices out and
22 get going so that we can have the FDOC brought in
23 at Evidentiary Hearing.

24 PRESIDING MEMBER LAURIE: Why don't you
25 call them in.

1 HEARING OFFICER GEFTER: Okay. Mr. Yee
2 and Mr. Beruldsen, are you on the phone?

3 MR. YEE: Yes, we are.

4 HEARING OFFICER GEFTER: Could you
5 answer our question as to when the FDOC will be
6 available to the Applicant? One or the other of
7 you please answer. Identify yourself, and --

8 MR. BERULDSEN: Okay. This is Knute
9 Beruldsen.

10 HEARING OFFICER GEFTER: Could you spell
11 your last name, please, for our reporter?

12 MR. BERULDSEN: Okay. B-e-r-u-l-d-s-e-
13 n.

14 HEARING OFFICER GEFTER: Thank you.

15 MR. BERULDSEN: Okay. We were just
16 about to get the modeling when I had spoken with
17 the folks reviewing the new air modeling, and the
18 health risk assessment. We were just about
19 finished Friday, and didn't quite finish, so I
20 would expect to have that sometime this week.

21 And then we're also internally reviewing
22 comments that we've received from the Energy
23 Commission in hand, also the Applicant. It's more
24 than just removal of the boiler. You know,
25 emissions from the turbine change, and so we're

1 revising -- we had to re-do our emission
2 calculation, and then, in addition, reviewing
3 comments we've received.

4 So I would expect hopefully finish up
5 that process end of this week or early next week.

6 HEARING OFFICER GEFTER: End of this
7 week, early next week. When do you think you'll
8 have a final FDOC ready to publish?

9 MR. YEE: This is Mr. Yee over here,
10 with the update. I believe that we'll probably
11 have a final FDOC, and we can send it to the CEC,
12 like Mr. Beruldsen was saying, probably early to
13 the middle of next week. In other words, a week
14 and a half to two weeks away.

15 HEARING OFFICER GEFTER: Okay. Thank
16 you very much. And then you understand that both
17 the Applicant and the CEC have heard you say that,
18 so --

19 (Laughter.)

20 HEARING OFFICER GEFTER: -- I'm sure the
21 parties will be in touch with you.

22 PRESIDING MEMBER LAURIE: Thank you,
23 gentlemen, very much.

24 HEARING OFFICER GEFTER: Thank you.

25 PRESIDING MEMBER LAURIE: Are there any

1 other issues, from a scheduling perspective, that
2 the Committee should be aware of?

3 MR. GALATI: Commissioner Laurie, you
4 had a question about the lease agreement?

5 PRESIDING MEMBER LAURIE: Yes.

6 MR. GALATI: And we have Rick Murillo on
7 the line from the City of Burbank. Maybe he can
8 answer, if you can patch him in.

9 PRESIDING MEMBER LAURIE: Yes. Thank
10 you.

11 HEARING OFFICER GEFTER: Mr. Murillo,
12 are you on the phone?

13 MR. MURILLO: Yes.

14 HEARING OFFICER GEFTER: Yes. There was
15 a question for you. Have you been listening?

16 MR. MURILLO: Off and on.

17 (Laughter.)

18 HEARING OFFICER GEFTER: Are you paying
19 attention?

20 MR. MURILLO: Yes. Off and on, I've
21 been listening in.

22 HEARING OFFICER GEFTER: Can you give us
23 an idea of the status of the lease agreement for
24 the Magnolia Project?

25 MR. MURILLO: It is still being worked

1 on by the project legal committee. I would say we
2 are very much near the end of our review. We have
3 another conference call scheduled for tomorrow,
4 and I'm quite sure that will be the last one. You
5 know, once the legal committee has signed off on
6 it, it would then go to the SCPPA Board and to the
7 Burbank Water and Power Board and the City Council
8 for approval.

9 HEARING OFFICER GEFTER: And what's the
10 timeframe on that?

11 MR. MURILLO: There's no -- there's no
12 set timeframe. I think once the committee
13 finishes its review, which I'm pretty sure will
14 occur tomorrow, it's just a matter of getting it
15 to the water -- Burbank, to the water and Power
16 Board and to the City Council. I mean, that could
17 be done within 30 days.

18 PRESIDING MEMBER LAURIE: Are the
19 different agencies going to require one agency or
20 the other to go first, or can they be agendized
21 contemporaneously?

22 MR. MURILLO: At this -- yeah, at this
23 point they could be agendized contemporaneously.

24 PRESIDING MEMBER LAURIE: Because I
25 would advise that. Commission practice, based

1 upon its own experiences, does not like to
2 entertain Evidentiary Hearings without conclusive
3 evidence of site control, through the form of a
4 lease. And that requires, that will require City
5 Council action.

6 And so 30 days may or may not cut it,
7 depending upon how we schedule it. But I would
8 advise the parties here that I would be extremely
9 hesitant to initiate Evidentiary Hearings without
10 evidence of site control in hand. Okay. And I'm
11 not saying that for you, sir, as much as the
12 parties that are sitting in front of me.

13 Appreciate your comments very much.

14 MR. MURILLO: You're welcome.

15 PRESIDING MEMBER LAURIE: Thank you.

16 Okay. Anything else, gentlemen?

17 MR. GALATI: No. Again, thank you for
18 the time to hear our case.

19 HEARING OFFICER GEFTER: Okay.

20 MR. GALATI: Appreciate it.

21 HEARING OFFICER GEFTER: Okay. The
22 Committee will issue a revised scheduling order
23 shortly, on the issues raised today.

24 PRESIDING MEMBER LAURIE: Now, and I
25 want to make sure that I understand the issues.

1 FDOC may evidently not be a problem. The lease is
2 a problem. I'm not going to get done with
3 Evidentiary Hearings and find out that the city
4 has backed out of the deal. I'm not going to do
5 that. I don't know what you can use for
6 preliminary evidence. It's not a done deal until
7 the council votes on it. So that's going to be a
8 concern.

9 As to the water quality permit, I will
10 read very carefully what you have submitted. My
11 concern is CEQA compliance. I hear the argument
12 that CEQA regs will be met by the imposition of
13 limits which would be imposed as a condition,
14 those limits which are currently being met by the
15 current permit, and there are ramifications
16 extending from all that. So if that is the
17 correct statement of the question, I will be
18 working with Ms. Geftter looking at the legal
19 arguments supporting.

20 So it may not just be a question of
21 policy or practice. I want to make sure as we
22 move forward that we are not putting ourselves in
23 a vulnerable CEQA position.

24 Okay. Anything else to come before the
25 Committee today, gentlemen?

1 MR. GALATI: No, thank you.

2 PRESIDING MEMBER LAURIE: Thank you.

3 Staff?

4 MR. REEDE: Thank you, Commissioner

5 Laurie.

6 PRESIDING MEMBER LAURIE: Okay. Ladies
7 and gentlemen on the phone, again, appreciate your
8 time. And the meeting is adjourned. Thank you.

9 (Thereupon, the Scheduling Conference
10 was concluded at 3:20 p.m.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, a Electronic Reporter,
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herein; that I recorded the foregoing California
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I further certify that I am not of
counsel or attorney for any of the parties to said
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